

OFFICE OF THE UNITED STATES TRUSTEE
74 Chapel Street
Albany, NY 12207
(518) 434-4553
Eric J. Small, Esq.

Hearing date and time:
August 27, 2010 at 9:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
(Poughkeepsie Division)

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In re:

WARD STREET ASSOCIATES,

Case No. 10-37496 (CGM)
(Chapter 11)

Debtor.

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**NOTICE OF MOTION FOR ORDER, PURSUANT TO
11 U.S.C. § 1112(b), CONVERTING CHAPTER 11 CASE
TO CASE UNDER CHAPTER 7, OR ALTERNATIVELY,
DISMISSING CHAPTER 11 CASE**

PLEASE TAKE NOTICE, that upon the annexed application, the United States Trustee for Region 2 will move this Court before the Honorable Cecelia G. Morris, United States Bankruptcy Judge, in the United States Bankruptcy Court, 355 Main Street, Poughkeepsie, New York 12601 on **August 27, 2010 at 9:00 a.m.**, or as soon thereafter as counsel can be heard, why an order should not be entered, pursuant to 11 U.S.C. 1112(b), converting this Chapter 11 case to a case under Chapter 7 of the United States Bankruptcy Code, or alternatively, dismissing this Chapter 11 case and for such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that responsive papers, if any, should be filed with the Court, and personally served upon the Office of the United States Trustee, at 74 Chapel Street, Suite 200, Albany, New York 12207, to the attention of Eric J. Small, Esq., no later than one (1) business day prior to the return date set forth above. Responsive papers, if any, shall be

in conformity with the Federal Rules of Civil Procedure and identify the party on whose behalf the papers are submitted, the nature of the response, and the basis for such response.

Dated: Poughkeepsie, New York
August 20, 2010

TRACY HOPE DAVIS
UNITED STATES TRUSTEE

By: /s/Eric J. Small, Esq.
74 Chapel Street
Suite 200
Albany, New York 12207
(518) 434-4553

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
(Poughkeepsie Division)

-----X

In re:

WARD STREET ASSOCIATES,

Case No. 10-37496 (CGM)
(Chapter 11)

Debtor.

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**APPLICATION OF THE UNITED STATES TRUSTEE
FOR ORDER, PURSUANT TO 11 U.S.C. § 1112(b),
CONVERTING CHAPTER 11 CASE TO CASE
UNDER CHAPTER 7, OR ALTERNATIVELY,
DISMISSING CHAPTER 11 CASE**

TO HONORABLE CECELIA G. MORRIS, UNITED STATES BANKRUPTCY JUDGE:

The United States Trustee for Region 2, in furtherance of duties and responsibilities pursuant to 28 U.S.C. § 586(a)(3), (5) moves this Court for an order, pursuant to 11 U.S.C. § 1112(b), converting this Chapter 11 case to a case under Chapter 7 of the United States Bankruptcy Code or, alternatively, dismissing this Chapter 11 case as a consequence of the absence of an attorney for this *pro se* limited liability company, the debtor's failure to file a company resolution evidencing authority to file the Chapter 11 case, or the corporate ownership statement required by Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") 1007(a)(1) and 7007.1, to file the affidavit required by Local Bankruptcy Rule 1007-2, or to file the balance sheet, cash flow statement, federal income tax return required under 11 U.S.C. § 1116(1)(A) notwithstanding identifying this case as a small business case within the meaning of 11 U.S.C. § 101(51C). To date, the debtor has failed to document the existence of insurance on its 216 unit apartment complex.

In support of this motion, the United States Trustee respectfully represents and alleges as follows:

1. Ward Street Associates commenced this case by filing a *pro-se* skeletal voluntary petition under Chapter 11 of the United States Bankruptcy Code on August 19, 2010. A prior case, filed on April 21, 2009 was dismissed by the Court on May 26, 2009 on motion of the United States Trustee filed after similar failures by the debtor to meet the most basic requirements of a Chapter 11 debtor from the outset of the case.

2. The debtor is a debtor-in-possession within the meaning of 11 U.S.C. § 1107, and based upon information gleaned in the prior case, owns and operates a 216 unit apartment complex in Pennsylvania.

3. The United States Trustee has not yet appointed a creditors committee in this case.

4. The debtor has not filed the affidavit required by Local Bankruptcy Rule 1007-2, a company resolution evidencing authority to file the Chapter 11 case required by Local Bankruptcy Rule 1074-1(a), or the corporate ownership statement required by Bankruptcy Rule 1007(a)(1) and made applicable to limited liability companies by Local Bankruptcy Rule 1007-3, all of which were due on the filing date.¹ The debtor has also failed to file the balance sheet, cash flow statement, federal income tax return required under 11 U.S.C. § 1116(1)(A) notwithstanding identifying this case as a small business case within the meaning of 11 U.S.C. § 101(51C).

5. The United States Trustee has not yet received documentation of the existence of

¹In addition, the debtor has not yet filed Schedules A, B, G, H or a Statement of Financial Affairs, due no later than September 2, 2010. In the event those schedules are not filed timely, the United States Trustee reserves the right to assert that cause also exists under 11 U.S.C. § 1112(e) to convert or dismiss the case upon the expiration of that deadline.

liability and casualty insurance for the estate. The absence of documentation of insurance was a significant factor in the United States Trustee's motion to convert or dismiss the prior case.

6. The case was filed *pro se*, and to date, no counsel has appeared on its behalf, and no application for the retention of counsel pursuant to 11 U.S.C. § 327(a) has been filed. Thus, this artificial entity debtor is operating in a Chapter 11 case and appearing in a federal court without counsel.

7. The United States Trustee submits that the foregoing facts demonstrate cause to convert or dismiss this case pursuant to 11 U.S.C. §§ 1112(b).

8. No prior application seeking the relief requested has been filed by the United States Trustee in this case.

9. The absence of an authorized attorney representing this limited liability company independently constitutes "cause" to convert or dismiss the case, as does the failure to evidence authority to file the case by filing company resolution authorizing the filing, or to file even the most basic documents attendant to the filing of a Chapter 11 case, including the Local Rule 1007-2 affidavit and the corporate ownership statement, or given its designation of the case as a "small business case" within the meaning of 11 U.S.C. § 101(51)(C), to file the balance sheet, cash flow statement, federal income tax return required under 11 U.S.C. § 1116(1)(A), which constitutes cause to convert or dismiss the case under 11 U.S.C. § 1112(b)(4)(F). In the event the debtor fails to furnish documentation of adequate insurance, cause would exist under 11 U.S.C. § 1112(b)(4)(C) and (H). The totality of the circumstances described also supports a finding of cause to convert or dismiss the case.

WHEREFORE, the United States Trustee respectfully requests that this Court enter an

order converting this Chapter 11 case to a case under Chapter 7, or alternatively dismissing the Chapter 11 case, and such other and further relief as the Court may deem proper.

Dated: Poughkeepsie, New York
August 20, 2010

Respectfully submitted,

TRACY HOPE DAVIS
UNITED STATES TRUSTEE

By: /s/ Eric J. Small, Esq.
74 Chapel Street
Suite 200
Albany, New York 12207
(518) 434-4553